

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)	
RNJ HOMES, INC.,)	
)	
Appellant,)	PCHB No. 85-65
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
PUGET SOUND AIR POLLUTION)	AND ORDER
CONTROL AGENCY,)	
)	
Respondent.)	

THIS MATTER, the appeal of a Notice and Order of Civil Penalty for violation of open outdoor burning laws and Regulation I of PSAPCA, came on for hearing before the Pollution Control Hearings Board on August 7, 1985, at Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk, Wick Dufford and Gayle Rothrock (presiding). Respondents elected a formal hearing. Lynn Tarry, court reporter, recorded the proceedings.

One witness was sworn and testified in person. Other witnesses' testimony and exhibits were submitted in writing. Oral argument was

1 heard. From the testimony, exhibits, and contentions of the parties,
2 the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a
6 certified copy of its Regulation I, of which we take judicial notice.

7 II

8 On December 19, 1984, appellant company RNJ Homes, Inc. through
9 its subcontractor did cause or allow an outdoor fire containing
10 natural vegetation and some prohibited materials at a construction
11 site at 45th and 186th Avenues, SE, near Issaquah in eastern King
12 County.

13 III

14 The fire in question was approximately four feet by four feet in
15 diameter and height and contained boxes, plastics, plaster board and
16 scrap lumber in addition to natural vegetation. The construction
17 debris caused the fire to emit dense smoke. It was a cold day. Some
18 construction workers were nearby.

19 IV

20 Two PSAPCA inspectors, in response to a complaint, arrived at the
21 site and made a surveillance. Photos of the fire were taken.

22 Contact was made with a superintendent at the site. He displayed
23 an expired burn permit obtained months earlier from King County Fire
24 District No. 10 to burn trimmings and cuttings of natural vegetation
25 only.

26 Final Findings of Fact,
27 Conclusions of Law & Order
PCHB No. 85-65

1 The inspectors issued a field notice of violation to appellant
2 company and thereafter handed it to a secretary at the construction
3 trailer. At this time, during which fire regulations were being
4 explained to the superintendent, a nearby workman added tarpaper and
5 more lumber to the fire. The superintendent finally directed the
6 workman to stop and took his own photos of the fire.

7 V

8 The captain at King County Fire District No. 10 arrived on the
9 scene and asserted he had previously been called to an illegal fire
10 maintained by contractors doing work for RNJ Homes, Inc., and that he
11 had explained the laws before to them.

12 Prior to leaving the site, the inspectors also explained open
13 outdoor burning regulations to the secretary in the construction
14 trailer.

15 VI

16 On April 23, 1985, after examining the records and files available
17 to it, PSAPCA issued a formal Notice and Order of Civil Penalty for
18 \$250 to appellant company for violation of Section 8.02(3) of
19 Regulation I. From this, RNJ Homes, Inc. appealed to the Board on
20 April 26, 1985.

21 VII

22 Any Conclusion of Law hereinafter determined to be a Finding of
23 Fact is hereby adopted as such.

24 From these Facts, the Board comes to these

25
26 Final Findings of Fact,
27 Conclusions of Law & Order
PCHB No. '85-65

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these persons and these matters.
4 Chapters 43.21B and 70.94 RCW.

5 II

6 The Legislature of the state of Washington has enacted a strict
7 policy on outdoor burning.

8 It is the policy of the state to achieve and
9 maintain high levels of air quality and to this end
10 to minimize to the greatest extent reasonably
11 possible the burning of outdoor fires. Consistent
12 with this policy, the legislature declares that
13 such fires should be allowed only on a limited
14 basis and under close control. (RCW 70-94.740).

15 Respondent PSAPCA has adopted its Regulation I, Section 8.02 which
16 provides in relevant part:

17 It shall be unlawful for any person to cause or
18 allow any outdoor fire:

19 (3) containing garbage, dead animals, asphalt,
20 petroleum products, paints, rubber products,
21 plastics or any substance which normally emits
22 dense smoke or obnoxious odors.

23 Appellant's failure to obtain a valid permit for a natural
24 vegetation site clearing fire and its fueling of the subject fire with
25 prohibited materials violated Section 8.02(3) of Regulation I.

26 III

27 Section 8.03 of the same regulation allows exemptions for certain
outdoor fires in otherwise prohibited circumstances. This includes

1 small outdoor fires, containing no prohibited materials, for pleasure,
2 religious, ceremonial, cooking or social purposes.

3 Appellant's objection that this was primarily a handwarming fire
4 for construction workers, typical of other such fires on east side
5 construction sites in King County, is not well placed. This fire did
6 not meet the terms of the exemption.

7 IV

8 Any Finding of Fact hereinafter determined to be a Conclusion of
9 Law is hereby adopted as such.

10 From these Conclusions, the Board makes this
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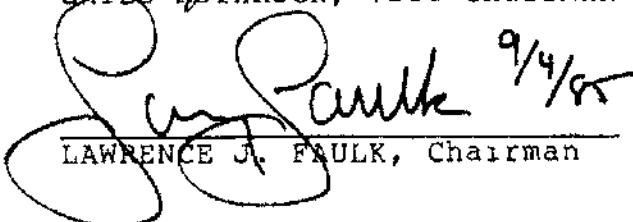
ORDER


Notice and Order of Civil Penalty 6240 is affirmed.

DONE this 5th day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE BOTHROCK, Vice Chairman


LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member